

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MINDY M MOORE
Claimant

APPEAL NO. 07A-UI-02345-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROYAL HOST MANAGEMENT INC
Employer

**OC: 02/11/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mindy Moore (claimant) appealed a representative's March 6, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Royal Host Management (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2007. The claimant participated personally. The employer participated by Marsha Abernathy, Human Resources Coordinator, and Carol Makoui, General Manager. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 8, 2006, as a full-time night auditor and desk agent. Her husband is in military training in another state. She made comments to a coworker that she would talk to him whenever he telephoned because he only calls her once or twice in a two-week period. The employer provides portable telephones and signs for the front desk should the desk agent have to leave the desk to service guests.

On January 1, 2007, the employer issued the claimant a warning for ignoring a guest's request and continuing to draw pictures at the desk. The claimant did not remember being given the written warning and refusing to sign it.

On February 4, 2007, the employer received a telephone call at home from a guest who was standing in the lobby. The guest had been waiting for 30 minutes and no one was at the desk to check him in to a room. Other customers had come and gone. The employer went immediately to work thinking the claimant was injured in some way. She found the claimant at the desk.

The claimant said her husband had called her and she left the desk, went to another part of the hotel. She secured herself in the laundry room with a closed door so she could converse with her husband.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She left the desk to have a personal conversation without making certain the employer's guests were accommodated. When a claimant intentionally disregards the

standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's March 6, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css